

THE HON'BLE SRI JUSTICE J. CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE P. SWAROOP REDDY

W.A.No. 302 of 2007

Dated:26 --04-2007

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Between:

The Rashtriya Ispat Nigam Ltd.,
Visakhapatnam Steel Plant,
Represented by its Chairman-cum-
Managing Director, Visakhapatnam
And two others

...Appellants/
Respondents

And

Shaik Rasheed
And others

...Respondents/
Petitioners

JC & PSR, JJ.

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W.A.No. 302 of 2007

Judgment

(Per P. Swaroop Reddy, J.)

This appeal is filed against the order of the learned single Judge in W.P.No. 14794 of 2004. Respondents in the writ petition are the appellants herein. *For the sake of convenience the parties herein would be referred to as they are arrayed before the learned single Judge.*

2. The case of the petitioners is that they were working as semi-skilled and unskilled employees in Visakhapatnam Steel

Plant (for short 'VSP'), on daily wages since 1995 continuously and satisfactorily. Thus they have spot less record of nine years of continuous service. Though they became entitled for regularization of services; their cases were not considered for regularization. Their dates of working were recorded differently i.e., 6-10-1995; 1-12-1998; 4-10-1995; 20-9-1995; 1-5-1997; 25-11-1998; 3-5-1996; 1—6--1996; 9-12-1995 and 4-10-2000 respectively. On their representation, the Asst. Labour Commissioner, Central, Visakhapatnam addressed letter dated:29.5.2003 to VSP requesting to consider the case of the petitioners for regularisation and also for enhancement of wages. Subsequently, the Asst. Labour Commissioner, conducted conciliation proceedings under section 12 of the Industrial Disputes Act and on 29.10.2003, the following minutes:

“Now after detailed discussions, the workmen agreed not to insist for regularisation of services as demanded and at the same time the Management has agreed to increase the Wages of the Workmen in skilled, semi-skilled and un-skilled categories at flat rate of 45% of the present monthly wages payable with effect from 1-6-2003. The Management also would consider to upgrade the un-skilled category of workmen to the category of semi-skilled in view of their long service and pay the benefits accordingly.

In view of the above, the workmen agreed to withdraw the dispute and requested the Conciliation officer to treat the dispute as closed.

As requested by the Parties the dispute has been treated as closed and disposed of as “Otherwise Disposal” in this office.”

vide No.5/9/2003-ALC was recorded. The petitioners were forced to agree for the conciliation, as the petitioners were assured of

regularisation within short time. With a view to maintain cordial relations with the management, they have not insisted for regularisation for the time being; but they have been continuously making representations from time to time for regularisation. The Management, which agreed in the reconciliation proceedings that they would also consider for up-gradation of unskilled category of workmen to the category of semi-skilled, have issued the notice of discontinuation. On 24.5.2004 they submitted representation to the Assistant Commissioner of Labour, Central, Visakhapatnam, the fourth respondent herein, stating that in spite of expiry of eighteen months, the management has taken no steps for regularisation of their services, having orally assured during the earlier conciliation proceedings. Several other contentions were also raised by them in their representations. It is also submitted that the Management wanted to discontinue their services and intending to recruit some other persons in their place. The petitioners have also raised other contentions saying that there is still work at Garbham mines and other places and thus they prayed for issuance of Mandamus declaring the impugned notice dated:17.8.2004 as arbitrary, illegal, void and consequently for a direction to continue the employment of the petitioners and to regularize their services.

3. After hearing both sides, the learned single Judge passed the impugned order directing the respondents to consider the cases of the petitioners for regularisation in their respective posts or the posts to which they are eligible as per the Regulations of the Steel Plant and until the cases of the petitioners are considered, not to attempt any direct recruitment.

4. Now, the contention of the learned counsel for the appellants-respondents is that the order of the learned single

Judge is not in order; that the employment of the petitioners was not in pursuance of any recruitment process or employment notification; that they were being engaged from time to time based on periodical operational requirement of the mine and they are not entitled for regularisation; their employment being temporary, time rated, piece rated and based on periodical operational requirement and the direction of the learned single Judge is contrary to the law laid down y the Apex Court in **Secretary, State of Karnataka v. Umadevi**^[1].

5. Now, the point for consideration is whether there are any grounds to allow the appeal.
6. There is no dispute about the petitioners working with the VSP since several years. Now it is reported that the second petitioner, Mannapuram Krishna Prasad died. From the details furnished by the learned counsel for the appellants, the petitioners are working from the dates mentioned below:

Sl. No.	Petitioner No.	Name of the petitioner	Date from which working
1	1 st petitioner	Shaik Rasheed	1.5.1997
2	3 rd petitioner	Billakurti Hanumantha Rao	1.6.1996
3	4 th petitioner	Kumipalli Durga Rao	1.4.1997
4	5 th petitioner	Chanumolu Sivarama Krishna	3.5.1996
5	6 th petitioner	Harendranath Thakur	19.12.1995
6	7 th petitioner	Dogga Suridemudu	4.10.1996
7	8 th petitioner	Devarapu Srinu	4.10.1996
8	9 th petitioner	Ganta Tirupati Naidu	25.11.1998
9	10 th petitioner	Gandepalli Atchutha Rao	6.10.1995
10	11 th petitioner	Sabu Billi Laxmu	20.9.1995
11	12 th petitioner	Garbam Vasudeva Rao	4.10.1995

Thus four of the petitioners are working since 1995; four more of them are working since 1996; two of them from 1997 and one was from 1998 and every one of them have completed about a decade of service, as such they have a strong case. But, admittedly, even as per the writ petition, it is seen that during the conciliation held in 2003, there was no proposal for regularisation. In fact, the beginning sentence of the conciliation minutes refer that “*the workmen agreed not to insist for regularisation of their services.*”

The contention of the petitioners that there was oral assurance during the above conciliation proceedings for regularisation cannot be accepted.

7. Added to the above position, now in view of the legal position as held by a Constitution Bench of the Apex Court in **Secretary, State of Karnataka (1 above)**, the respondents-writ petitioners cannot claim regularisation as a matter of right. Though the petitioners would be entitled to compete for recruitment, would be entitled for some weightage and for waiver of age restriction.

8. In these circumstances, we hold that the cases of the writ petitioners/respondents have to be considered for recruitment to suitable posts, whenever recruitment process takes place, any where in Visakhapatnam Steel Plant; and not only at the places where they are working presently. They shall also be entitled for waiver of age restriction and appropriate weightage in the process of selection. The restrictions imposed by the learned single Judge on the recruitment till the cases of the petitioners/respondents are considered is modified, directing the appellants to consider the

cases of the petitioners from the very first recruitment that takes place after the date of this order.

9. The writ appeal is ordered accordingly. No costs.

J. CHELAMESWAR, J.

26 ---04---2007.
BVS

P. SWRAOOP REDDY, J.

[\[1\]](#) 2006 (4) SCC 1